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**TITLE 327 WATER POLLUTION CONTROL DIVISION**

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**Proposed Rule**  
LSA Document #19-510**DIGEST**

Amends [327 IAC 2-1-3.1](#) concerning combined sewer overflow (CSO) wet weather limited use designation. Adds [327 IAC 2-1-11.5](#) concerning CSO wet weather limited use subcategory. Effective 30 days after filing with the Publisher.

**PURPOSE OF NOTICE**

The Indiana Department of Environmental Management (IDEM) has developed a proposed rule under [IC 13-14-9-14](#)(c) to amend [327 IAC 2-1-3.1](#) and add [327 IAC 2-1-11.5](#) concerning the establishment of a combined sewer overflow (CSO) wet weather limited use subcategory for the area defined by the use attainability analysis for the city of Indianapolis, prepared by CWA Authority, Inc. IDEM is soliciting public comment on the proposed rule and will schedule a public hearing before the Environmental Rules Board (board) for consideration of adoption of these rules. IDEM seeks comment on the affected citations listed and any other provisions of Title 327 that may be affected by this rulemaking.

**CITATIONS AFFECTED:** [327 IAC 2-1-3.1](#); [327 IAC 2-1-11.5](#).

**AUTHORITY:** [IC 13-14-8-7](#); [IC 13-14-9-14](#); [IC 13-18-3-2](#); [IC 13-18-3-2.5](#).

**SUBJECT MATTER AND BASIC PURPOSE OF RULEMAKING****Basic Purpose and Background**

[IC 13-18-3-2.5](#) originated with Senate Enrolled Act (SEA) 620 (also known as Public Law 54-2005) that was passed in the 2005 legislative session to establish the CSO wet weather limited use subcategory of the recreational use designation for waters receiving combined sewer overflows. Accordingly, the water pollution control board (WPCB) adopted rules in 2007 to implement the establishment of the subcategory. The subcategory is available to CSO communities that perform a use attainability analysis to change the designated use of waters receiving CSOs and have implemented an approved long term control plan. The long term control plan must be approved by IDEM and incorporated into the community's National Pollutant Discharge Elimination System (NPDES) permit or an order of the commissioner under [IC 13-14-2-6](#). The long term control plan must also specify the water quality-based requirements that apply to CSOs during and immediately following wet weather events.

[IC 13-14-9-14](#), added by Public Law 100-2006, SECTION 10, allows the Environmental Rules Board to adopt a rule to establish new water quality standards for a community served by a combined sewer that has an approved long term control plan and an approved use attainability analysis that supports the use of a CSO wet weather limited use subcategory established under [IC 13-18-3-2.5](#). The subcategory will apply to the community's CSO outfalls when the approved long term control plan is implemented, in accordance with [IC 13-18-3-2.5](#).

**PUBLIC COMMENTS UNDER [IC 13-14-9-14](#)(d)(2)**

[IC 13-14-9-14](#)(d)(2) states that notice of rule language to amend a designated use to allow for a CSO wet weather limited use subcategory in accordance with [IC 13-18-3-2.5](#) shall include a written comment period of at least 30 days.

**REQUEST FOR PUBLIC COMMENTS**

This notice requests the submission of comments on the proposed rule language, including suggestions for specific revisions to language to be contained in the proposed rule. Comments may be submitted in one of the following ways:

(1) By mail or common carrier to the following address:

LSA Document #19-510 (Indianapolis CSO Wet Weather Limited Use Designation)

MaryAnn Stevens

Rules Development Branch

Office of Legal Counsel

Indiana Department of Environmental Management

Indiana Government Center North

100 North Senate Avenue

Indianapolis, IN 46204-2251

(2) By facsimile to (317) 233-5970. Please confirm the timely receipt of your faxed comments by calling the

Rules Development Branch at (317) 232-8635.

(3) By electronic mail to [mstevens@idem.in.gov](mailto:mstevens@idem.in.gov). To confirm timely delivery of submitted comments, please request a document receipt when sending the electronic mail. **PLEASE NOTE: Electronic mail comments will NOT be considered part of the official written comment period unless they are sent to the address indicated in this notice.**

(4) Hand delivered to the receptionist on duty at the thirteenth floor reception desk, Office of Legal Counsel, Indiana Government Center North, 100 North Senate Avenue, Indianapolis, Indiana.

Regardless of the delivery method used, to properly identify each comment with the rulemaking action it is intended to address, each comment document must clearly specify the LSA document number of the rulemaking.

#### COMMENT PERIOD DEADLINE

All comments must be postmarked, faxed, or time stamped not later than November 15, 2019.

Hand-delivered comments must be delivered to the appropriate office by 4:45 p.m. on the above-listed deadline date.

Additional information regarding this action may be obtained from MaryAnn Stevens, Rules Development Branch, Office of Legal Counsel, (317) 232-8635 or (800) 451-6027 (in Indiana).

#### [327 IAC 2-1-3.1](#); [327 IAC 2-1-11.5](#)

SECTION 1. [327 IAC 2-1-3.1](#) IS AMENDED TO READ AS FOLLOWS:

#### [327 IAC 2-1-3.1](#) CSO wet weather limited use designation

**Authority:** [IC 13-14-8](#); [IC 13-14-9](#); [IC 13-18-3-2.5](#)

**Affected:** [IC 13-14-2-6](#); [IC 13-14-9-14](#); [IC 13-18-4](#)

Sec. 3.1. (a) The CSO wet weather limited use subcategory established under section 3 of this rule ~~shall be applied only~~ **applies** to waters receiving wet weather discharges from combined sewer overflows **that are listed in section 11.5 of this rule.**

(b) To receive consideration for the CSO wet weather limited use subcategory designation, a CSO community must do the following:

- (1) Perform a use attainability analysis (UAA) to change the recreational designated use of the waterbody or waterbodies receiving the wet weather discharges from combined sewer overflows.
- (2) Submit the UAA to the department for approval.
- (3) Submit a long term control plan (LTCP) consistent with the application of the CSO wet weather limited use subcategory to the department for approval.

(c) The LTCP submitted to the department must:

- (1) specify the water quality-based requirements that will apply to combined sewer overflows under subsection (h) if the waterbody or waterbodies receiving the wet weather overflows are redesignated to the CSO wet weather limited use subcategory; and
- (2) meet the requirements of Section 402(q) of the Clean Water Act\*.

(d) The department shall:

- (1)** review the UAA concurrently with the LTCP if they are submitted concurrently; ~~The department shall~~ **and**
- (2)** use the LTCP to satisfy the requirements of the UAA, to the extent possible.

(e) Upon approval of a UAA, the department shall begin a rulemaking under [IC 13-14-9-14](#) to amend the designated use to a CSO wet weather limited use designation. The rulemaking may commence before full implementation of the approved LTCP.

(f) Upon completion of the rulemaking required under subsection (e), the department shall submit the amended recreational use designation and the supporting UAA to the U.S. EPA for approval.

(g) Upon U.S. EPA's approval of the use designation change for the waterbody or waterbodies receiving wet weather overflows from a CSO community, the department shall modify the NPDES permit holder's permit to incorporate the CSO wet weather limited use designation and the approved LTCP into the permit.

- (h) The water quality-based requirements for the CSO wet weather limited use designation shall: **must:**
- (1) be determined by the approved LTCP for the combined sewer system;
  - (2) be consistent with the Clean Water Act; and
  - (3) remain in effect during the time and to the physical extent that the recreational use designation that applied to the waters immediately before the application to the waters of the CSO wet weather limited use subcategory is not attained but for not more than four (4) days after the date the overflow discharge ends.

**\*This document is incorporated by reference. Copies may be obtained from the Government Publishing Office, [www.gpo.gov](http://www.gpo.gov), or are available for review at the Indiana Department of Environmental Management, Office of Legal Counsel, Indiana Government Center North, Thirteenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204.**

(Water Pollution Control Division; [327 IAC 2-1-3.1](#); filed Sep 6, 2007, 12:25 p.m.: [20071003-IR-327050218FRA](#))

SECTION 2. [327 IAC 2-1-11.5](#) IS ADDED TO READ AS FOLLOWS:

**[327 IAC 2-1-11.5](#) CSO wet weather limited use; designated waters**

Authority: [IC 13-14-8](#); [IC 13-14-9](#); [IC 13-18-3](#)

Affected: [IC 13-18-4](#)

**Sec. 11.5. (a) The following waters of the state are designated for limited use in CWA Authority, Inc.'s approved long term control plan for the city of Indianapolis pursuant to the CSO wet weather limited use subcategory established under section 3(c) of this rule:**

- (1) White River from 56<sup>th</sup> Street on the Indianapolis north side to Freedom (River Mile 146).
- (2) Fall Creek from Keystone Avenue to the White River.
- (3) Little Eagle Creek from Michigan Street to the confluence with Big Eagle Creek.
- (4) Big Eagle Creek from the confluence with Little Eagle Creek to the White River.
- (5) Pogues Run from 21<sup>st</sup> Street to the White River.
- (6) Pleasant Run from Kitley Avenue to the White River.
- (7) Bean Creek from Interstate 65 to Pleasant Run.

**(b) The water quality-based requirements for the CSO wet weather limited use subcategory:**

- (1) are determined by the approved LTCP for the combined sewer system; and
- (2) remain in effect:
  - (A) during the time and to the physical extent that the recreational use designation that applied to the waters immediately before the application of the subcategory is not attained; and
  - (B) for not more than four (4) days after the date the CSO discharge ends.

(Water Pollution Control Division; [327 IAC 2-1-11.5](#))

**[Notice of Public Hearing](#)**

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An [html](#) version of this document.